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APPENDICES

APPENDICES

APPENDIX A

Sections 401 and 402(a)(7) of the Social Security Act, 42 U.S.C. §§ 601 and 602(a)(7)

42 U.S.C. § 601 (Aug. 14, 1935, c. 531, Title IV, § 401, 49 Stat. 627):

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

42 U.S.C. § 602(a)(7) (amended by Act Jan. 2, 1968, P.L. 90-248, Title II, Part 1, § 202(b), 81 Stat. 881, effective July 1, 1969):

> A State plan for aid and services to needy families with children must . . . (7) provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income.

APPENDIX B

HEW Regulation, 45 Code of Federal Regulations, Section 203.1

Sec. 203.1. Condition of plan approval: bases for determining eligibility of child.

(a) A State plan for aid and services to needy families with children under part A of title IV of the Social Security Act, to be approved under section 402 of such Act (42 U.S.C. 602), must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to a child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children.

(b) The inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in paragraph (a) of this section is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. As provided in Interim Policy Statement No. 4 (33 F.R. 10230, July 17, 1968), items 3.C.2(i) and (iii), and 6(ii), in the consideration of all income and resources in establishing financial eligibility and the amount of the assistence payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in paragraph (a) of this section will be considered available for children in the household in absence of proof of actual contributions.

(c) Any State whose past policies and procedures with respect to the determination referred to in paragraph (a) of this section have been inconsistent with the provision in paragraph (a) or (b) of this section must provide effective methods for giving notice of its present policies and procedures to former and potential applicants for and recipients of AFDC and to other interested persons. The methods which the State agency proposes to meet this notice requirement must be submitted to and be approved by the Regional Commissioner, SRS, DHEW. In addition, where the records of the State agency permit identification of persons whose cases have been terminated or applications denied at any time within the past 2 years by reason of such inconsistent policies or procedures, the State agency must give prompt written notification to such persons concerning the change in such policies or procedures. Such notification must be given within 90 days of publication of the regulations in this part and must explain clearly the rights which such persons have under the regulations in this part.

(Sec. 1102, 49 Stat. 647, Sec. 402, 49 Stat. 627; 42 U.S.C. 1302, 602).

Effective date. The regulations in this part shall be effective on the date of their publication in the *Federal Register.*

[Published on August 8, 1968, at 33 Fed. Reg., No. 154, 11290.]

APPENDIX C

Excerpts from Part IV of the Handbook of Public Assistance Administration, United States Department of Health, Education and Welfare

3120. *Interpretation*

. . . .

Availability of Income and Resources

In some States, policy has been in effect whereby income and resources, not actually available, have been assumed to be available to applicants and recipients, and have been considered so as to reduce the amount of assistance and thus the total amount actually available for meeting the essentials of living. To meet this inequity, a requirement is being added, to become effective July 1, 1967, for all new cases, and for all other cases as they come up for redetermination of eligibility thereafter.

Under this requirement, a State must differentiate between resources that can be counted on because they are available for current use on a regular basis and those found not to be available for the individual's use in meeting subsistence needs as defined in the State's standard. This means taking into consideration, in determining need and amount of payment, all current income from all sources, such as earnings, OASDI monthly benefits, contributions, etc., actually available to meet the individual's needs on a regular basis (except as required or permitted to be disregarded or set aside under the various titles of the Social Security Act or other Federal law) and in contrast, omitting from consideration in determining need and amount of payment any income or resources merely assumed to be possessed by the individual.

Thus, income must not be considered where it is not, in fact, currently available to the needy individual; e.g., support payments ordered by the court but which are not, in fact, made; contributions which relatives have been determined able to make but which are not, in fact, made; and income from employment assumed to be available in the community when, in fact, the individual is not working.

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3123. *Contributions From Relatives*

The Federal Act does not require States to hold relatives responsible for the support of applicants for or recipients of assistance. Regular and substantial contributions to the support of an applicant or recipient by relatives must be taken into account when they are actually available. Gifts from relatives and contributions of small value and occurring infrequently and unpredictably as expressions of affection are not related to the support of the recipient and should not be considered as income.

A State which holds relatives responsible for the support of applicants or recipients of assistance must provide an income scale as a method to determine whether responsible relatives have sufficient income to warrant expectation that they can contribute to the support of applicants or recipients. Such income scales must exceed a minimum subsistence level of living and must at least represent a minimum level of adequacy which takes account of the needs and other obligations of the relative.

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It shall not be assumed that any relative whose income is below the scale is contributing to the support (or medical care) of applicants or recipients.

3124. *Court-Ordered Support Payments*

Court-ordered support payments by absent parents must be taken into account when they are in fact available to the family, but with provisions that insure that income is available to meet the needs of the mother and children on a regular monthly basis. In reviewing actual practice, it has been found that most support payments in AFDC are irregular. For families whose incomes are limited, an interruption or fluctuation in support payments can result in severe hardship to the family.

Reduced assistance payments based on assumed receipt of support payments or any other income that is not, in fact, available, are inconsistent with the welfare agency's responsibility for meeting need and strengthening family life. They result in inequity in meeting the continuing needs of the families affected.

It is incumbent on public welfare agencies to do all they can to help and encourage parents to make regular contributions to the care of their children, and to cooperate with the courts in the method designated.

The method of handling court-ordered support payments is, of course, at the discretion of each court and may vary widely within a State. For example, some payments may be ordered payable directly to the mother, some to the mother through the court, and some to the mother through the welfare agency.

The most economical method from the standpoint of the family and the welfare department is usually to have the payments made to the welfare agency, either directly by the absent parent or by the court. It is desirable that this method of payment be adopted Statewide so far as it meets approval of the courts.

. . . .

Theoretically, it would be preferable to use another method, namely, for the family to receive payments directly from the court or the other parent and to deal with the court if the support payments are not made regularly. Many of the AFDC mothers, however, do not have the "know-how" to follow through and most courts cannot assure prompt action when payments are delinquent. When this method is used, the agency must assure that public assistance payments are adjusted promptly and regularly when there is any interruption of support payments. This method is difficult to administer as well as time-consuming for the agency. Therefore, its use is recommended only when there is reasonable certainty that the support payments are being made and will continue to be made regularly . . . .

3131. *Requirements for State Plans*

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7. Effective July 1, 1967, for all new cases, and for all other cases as they come up for redetermination of eligibility thereafter, the State plan must provide that only income and resources that are, in fact, available to an applicant or recipient for current use on a regular basis will be taken into consideration in determining need and the amount of payment.

. . . .

10. Effective July 1, 1967, in a State which holds relatives responsible for the support of applicants for or recipients of assistance, the State plan must provide an income scale as a method to determine whether responsible relatives have sufficient income to warrant expectation that they can contribute to the support of applicants or recipients. Such income scale must exceed a minimum subsistence level of living, and must

at least represent a minimum level of adequacy which takes account of the needs and other obligations of the relative.

Effective July 1, 1967, the State plan must also provide that no request will be made for contributions to applicants for or recipients of assistance from relatives whose net cash income is below such scale, unless such applicant for or recipient of assistance is such relative's spouse or minor child who is living in the home with the relative.

11. Effective July 1, 1967, the State plan must assure that, when support payments by absent parents have been ordered by a court, a regular amount of income is available monthly to meet the determined needs of the mother and children whether or not the support payments are received regularly, and that the agency will not delay or reduce public assistance payments on the basis of assumed support which is not actually available.

APPENDIX D

California Welfare and Institutions Code, Section 11351

Sec. 11351. Computation of aid; stepfather's income; support by stepfather.

Where a needy child lives with his mother and a stepfather or an adult male person assuming the role of spouse to the mother although not legally married to her, the amount of the grant made pursuant to Section 11450 of this code shall be computed after consideration is given to the income of the stepfather or such adult male person. The county granting aid shall determine if the stepfather or such adult male person is able to support the child either wholly or in part. The determination shall be based upon a standard which takes into account the stepfather's or such adult male person's income and expenses under regulations adopted by the department.

Notwithstanding the provisions of Section 209 of the Civil Code, a stepfather or such adult male person is bound to support, if able to do so, his wife's children if without support from such stepfather or adult male person they would be needy children eligible for aid under this chapter. However, such liability for support shall not exceed the wife's community property interest in his income.

A natural father is not relieved of any legal obligation to support his children by the liability for their support imposed upon their stepfather by this section.

As used in this section, "adult male person" means any male person of age 18 years or older. (Added Stats. 1965, c. 1784, p. ——, § 5.)

APPENDIX E

Excerpts from California State Department of Social Welfare, Manual of Policies and Procedures, as Existing at Time Suits Were Commenced

Calif. MPP §§ 42-531 and 42-535 Responsible Relatives [Superceded by §§ 42-513 and 42-515, *see* Appendix F].

42-531 THE STEPFATHER 42-531

AFDC Where a needy child lives with his mother and his stepfather, the amount of grant shall be computed after consideration is given to the income of the stepfather.

.1 *Definition*

A stepfather is a man who is married to the mother of a child of whom he is not the natural father.

.2 *Stepfather's Responsibility for Support*

A stepfather is responsible for the support of:

a. His children from another union living outside the home;

b. His children living in the home;

c. His wife;

d. His wife's needy children, to the extent of his ability, when his wife and her children are living in the home with him.

.3 *County Responsibility—Stepfather in the Home*

The county department is responsible for:

.31 Determining eligibility for *AFDC* of all children in the home.

.311 Children of the stepfather from his current marriage would qualify for aid only on the basis of deprivation due to unemployment or incapacity.

.312 His children of another relationship, living in the home, may qualify for aid on the basis of absence of the natural mother.

.313 The mother's children from another relationship living in the home may qualify for aid on the basis of absence of their natural father.

All eligible children would be carried as a single case.

.32 Determining the composition of the Family Budget Unit (See Section 44-213).

.33 Determining need, income and amount of grant (See Section 44-113.242 and 44-133.1).

AFDC .34 Providing services described in the Services regulations.

.35 Taking steps necessary to secure support from absent natural fathers of mother's children. (See section 42-517)

42-535 RESPONSIBILITY OF MAN ASSUMING THE ROLE OF SPOUSE 42-535

AFDC .1 *Definition—Man Assuming the Role of Spouse*

A man will be considered to be assuming the role of spouse if it has been found that he is not married to the mother and not the father of any of her children, but that:

.11 He is in or around the home and is maintaining an intimate relationship with the mother; *and*

.12 Either he has assumed substantial financial responsibility for the ongoing expenses of the *AFDC* family; *or*

.13 He has represented himself to the community in such a way as to appear in the relationship of husband or father, or both.

Interpretation — The following factors may substantiate that the man has assumed financial obligations or has represented himself as spouselike.

a. Man has assumed financial obligations

1. Man has paid family bills, opened charge accounts jointly or in his name for use of the family, or similarly obtained credit for the benefit of the family.

2. The man has paid medical or other bills incurred by the family.

3. Man has claimed mother and children as dependents in filing income tax.

b. Man represents self as spouselike

1. Representation to others, such as landlords, friends, community, as husband and wife.

2. Use of man's name by children for various purposes, including school records.

3. Man's attendance as parent at children's school function.

4. *Man is attentive to children and provides recreation, gifts, etc., or admittedly disciplines children.*

5. *Children refer to man as father.*

6. *Use of man's automobile by AFDC family or registration in man's and mother's names.*

7. *Use of AFDC family's address by man for mail, employment records, hospitalization, arrests, etc.*

8. *No demonstrable or confirmable alternative living arrangement other than with the AFDC family.*

These factors should not be considered an exclusive listing, for other similar factors may be used. On the other hand, the existence of a single factor may not be conclusive proof that the criteria are met. For example, a man in a courtship relationship might take the children on outings, provide gifts or even discipline them. This fact alone would not be proof of a spouselike relationship.

If the man has assumed financial obligations and/or represented himself as spouselike but there is no proof that he has been in a spouselike relationship, the presumption of a spouselike relationship does not exist and the county has the burden of proving that the man has assumed the role of spouse.

.2 *Responsibility of Man Assuming Role of Spouse for Support*

The man assuming the role of spouse is responsible for the support of:

.21 His children

.22 To the extent of his ability, the mother and her needy children. He is *not* included in the Family Budget Unit with the mother.

.3 *Responsibility of the County Welfare Department*

The county welfare department is responsible for:

.31 Determining eligibility for *AFDC* of all children living in the home. The children of the man assuming the role of spouse by another relationship who are living with him in the home would qualify for aid on the basis of deprivation due to the absence of their natural mother and are carried as a separate case with their father.

.32 Determining the composition of the Family Budget Unit. (See Section 44-213.1 and .2)

.33 Determining need, income, and amount of the grant. The income to the family budget unit from the man assuming the role of spouse shall be computed in accordance with Section 44-133.5.

.34 Providing services described in the Services regulations and Department Bulletin No. 624 when appropriate.

(Issues 314-317, effective 11/1/67.)

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Calif. MPP § 44-101 Income Definitions [still in effect].

AB APSB Income, generally, is any benefit in cash or in kind which is in fact currently available to the

ATD *OAS* *AFDC* individual or is received by him as a result of current or past labor or services, business activities, interests in real or personal property, or as a contribution from persons, organizations or assistance agencies. To be considered in determining the AFDC aid payment, income must, in fact, be currently available to needy members of the family in meeting their needs during the budget period. Subject to this limitation and the exemptions and exclusions, as specified in Section 44-111 of this chapter, such benefits are taken into consideration as income in evaluating the need of the recipient and in determining the amount of assistance to which he is entitled.

(Issue 95, effective 7/1/67.)

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Calif. MPP §§ 44-113.23 and 44-113.24 Deductions from Earnings [amended in part, *see* Appendix F].

AFDC .23 *Earnings — AFDC*

In order that the use of family income for expenses entailed in employment will not reduce the money available to meet basic and other needs, such expenses are to be deducted from gross earnings as follows:

.231 All involuntary deductions made by the employer.

.232 The standard allowance for food, clothing, and personal incidentals for employment as set forth in the following table:

TABLE OF STANDARD ALLOWANCES FOR FOOD, CLOTHING, AND PERSONAL INCIDENTALS RESULTING FROM EMPLOYMENT

Monthly Take-Home Pay	Standard Allowance	Monthly Take-Home Pay	Standard Allowance	Monthly Take-Home Pay	Standard Allowance
$4 or less	All income	$13	$11	$22	$18
5	$4	14	12	23	19
6	5	15	12	24	20*
7	6	16	13	25	21
8	7	17	14	26	21
9	8	18	15	27	22
10	8	19	15	28	23
11	9	20	16	29	24
12	10	21	17	30	25**

* Maximum allowance for children under age 18.

** Maximum allowance for adult or children age 18 through 20.

AFDC .233 All other expenses incurred to retain employment. Such expenses include the cost of:

a. Transportation to and from work and on the job if not reimbursed by the employer.

b. Tools and licenses required for the job.

c. Dues to unions, business organization, employee clubs, or similar assessments.

d. Contributions to collections for employee benefits necessary to holding the job.

e. Necessary educational or training expenses related to employment including any necessary publications.

f. Care of children at or in day care facilities when the caretaker is employed.

g. Special safety devices needed by handicapped people and not furnished by the employer or another agency.

h. Telephone service required in connection with employment.

i. Unusual expenses required for employment.

(See Determination of Need Chapter for allowance for expenses to obtain employment.)

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.24 *Other Deductions from Net Income*

In addition to the deductions described above, deductions for other expenses of persons with income from any source, shall be made as follows:

.241 *Court Ordered Support Payment by Natural Parent*

Deduction for support of a child or spouse not in the home, paid on court order, shall be made not to exceed three months if the parent requests review of the order. If, upon review, the court orders continued support payments, the amount of the court order shall be deducted until the order is changed.

.242 *Stepfather*

Deduction is made from income for:

a. The support payments actually made to or for his dependents living elsewhere.

b. Alimony payments to his ex-wife in the amount of the court order.

c. The cost of medical care of the stepfather and other persons in the Family Budget Unit for whom there is no federal eligibility as child or caretaker.

(Issues 118 and 119, effective 7/1/67; Rev. 149, effective 7/1/68.)

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Calif. MPP § 44-133.5 Treatment of Income of Man Assuming the Role of Spouse [*See* Appendix G for proposed amendments].

.51 The amount the unmarried father or man assuming the role of spouse is able to contribute to the *AFDC* family is net income to the FBU.

.52 In situations in which the children of the unmarried father and mother are eligible for *AFDC* on the basis of unemployment or incapacity of the unmarried father, all the children of either parent in the home may be eligible for *AFDC*. In such cases the unmarried father and the mother and all children are included in the FBU and all income of these persons is income to the FBU.

.53 In all other situations, the ability of either the unmarried father or the man assuming the role of spouse to contribute to the FBU is determined as follows:

Step 1. Determine total need in accordance with the *AFDC* assistance standard for the family consisting of the members of the FBU, the unmarried

father or man assuming the role of spouse, and his children living in the home.

Step 2. Determine total need of the FBU.

Step 3. Compute the difference between the two budgets to determine the amount that represents the need of the unmarried father or man assuming the role of spouse for purposes of establishing his responsibility to meet his own needs and the extent of his responsibility to contribute to the FBU.

Step 4. From the needs determined in *Step 3,* deduct his net income computed in accordance with Section 44-113 to establish his ability to contribute to the FBU.

a. If his income exceeds the need, the excess is income to the FBU.

b. If his income does not exceed the need, there is no income to the FBU. His children are needy and may qualify for *AFDC* as a separate case if his income is less than the need.

(Issue 133, effective 7/1/67.)

APPENDIX F

Regulations Promulgated by California State Department of Social Welfare Since the Suits Were Filed

Calif. MPP §§ 42-513 and 42-515 Responsibility for Support: Definitions [*See* Appendix G for proposed amendments].

42-513 RESPONSIBILITY FOR SUPPORT 42-513

AFDC .1 *Parents—General*

Parents, including the father not married to the mother, are responsible to the extent of their ability for the support and care of their children, natural or adopted. This responsibility continues even though the parent is not living with his family, the marriage has been legally dissolved, the parents are not married, or there has been a court order removing the children from the parents' custody. However, responsibility for parental support ceases if relinquishment for adoption has been signed, unless and until the relinquishment has been terminated.

AFDC .2 *Cooperation Requirement — Parent Remaining with Child*

.21 When one parent is absent, the parent remaining with the child must cooperate with law enforcement officers by providing reasonable assistance to them in the enforcement of the obligation of the absent parent to provide support for the absent parent's child(ren).

.211 For purposes of this section, if one parent has been given legal custody and control of the child such parent shall be considered the "parent remaining with the child" even though not living with the child.

.22 Any one or more of the following acts knowingly taken by the parent remaining with the child shall be deemed to be a refusal to cooperate with law enforcement officers (W&IC Section 11477):

.221 A refusal to be interviewed by the district attorney.

.222 A refusal to sign a complaint against the absent parent.

.223 A request to dismiss the complaint.

.224 The concealment of the identity or whereabouts of the absent parent.

.23 The remaining parent shall be informed of the requirement for notification and referral to the district attorney and the remaining parent's responsibility to cooperate with the district attorney as soon as it is determined that the requirement is applicable. (For limitations on interviews and statements by welfare department personnel regarding the nature of the charges which may be brought against the individual see Section 20-009.2.)

.231 The remaining parent shall be given the opportunity to withdraw the application if he or she does not wish the notification to be made or the recipient may request discontinuance if he or she does not wish the referral to be made.

.24 The signing of an application or the granting of aid shall not be construed as failure or refusal of the remaining parent to carry out his or her parental support responsibilities.

.25 The county welfare department shall have the final responsibility for determining whether the remaining parent has given reasonable assistance to law enforcement officers. In making this determination, the following factors shall be considered:

.251 The mental capacity of the remaining parent.

.252 The presence or absence of fear based on threats of physical or economic reprisal by the absent parent.

.3 *Cooperation — Guardian or Person Other Than Remaining Parent*

A guardian of a child who is not the child's parent, or person other than a guardian or parent who acts on behalf of the child, who has the legal authority to sign a nonsupport complaint against the parent may be asked to do so, but failure or refusal to comply shall not constitute noncooperation and shall not disqualify the child for aid to which the child is otherwise entitled.

.31 The guardian or person other than the remaining parent shall be informed and given the same opportunities provided for the remaining parent in Sections 42-513.23 and 42-513.231 above.

.4 *Absent Parent's Responsibility*

.41 Whenever aid is applied for or granted on behalf of a child who is not living with both parents, the absent parent is required by W&IC Section 11353 to complete a statement for purposes of determining ability to support the child. Such statement shall contain the following information:

.411 Current monthly income;

.412 Total income for the last 12 months;

.413 The number of dependents for whom support is being provided;

.414 The amount being contributed regularly for support of all children for whom application for AFDC is made;

.415 Current living expenses;

.416 Other data pertinent to determining ability to support the children.

.42 Refusal or failure of the absent parent to complete this statement requires the county welfare department to refer the case to the district attorney (W&IC Section 11353; W&IC Section 11476).

AFDC .5 *Stepfather*

A stepfather is responsible for the support of:

.51 His children from another union living outside the home;

.52 His children living in the home;

.53 His wife; and

.54 His wife's needy children, to the extent of his ability and not to exceed her community property interest in his income, when his wife and her children are living in the home with him (W&IC Section 11351).

.6 *Unmarried Father*

The unmarried father is responsible for the support of:

.61 His child (including the unborn child); and

.62 To the extent of his ability, the support of the mother and her needy children, when the mother and her children are living in the home with him (W&IC Section 11351).

.7 *Man Assuming the Role of Spouse*

The man assuming the role of spouse is responsible for the support of:

.71 His children; and

.72 To the extent of his ability, the mother and her needy children (W&IC Section 11351). (See Section 42-515.4.)

.8 *Adult Children*

Adult children are responsible for the support of their parents to the extent of their ability. However, adult children are not responsible for the support of their brothers and sisters.

42-515 Definitions for Purposes of Support Responsibility 42-515

AFDC .1 *Parents*

The natural parents, married or unmarried, are the parents of the child unless the child has been adopted. The adoptive parents are the parents thereafter.

.2 *Stepfather*

A stepfather is a man who is married to the mother of a child of whom he is not the natural father.

.3 *Unmarried Father*

An unmarried father is a man who is not married to the natural mother of one or more of their children even though he may be married to another woman.

.4 *Man Assuming the Role of Spouse*

.41 *Definition*

A man will be considered to be assuming the role of spouse if it has been found that he is not married to the mother and not the father of any of her children, but that:

.411 He is in or around the home and is maintaining an intimate relationship with the mother; *and*

.412 Either he has assumed substantial financial responsibility for the ongoing expenses of the *AFDC* family; or

.413 He has represented himself to the community in such a way as to appear in the relationship of husband or father, or both.

.42 *Criteria*

The determination of whether the man has assumed financial obligations or has represented himself as spouselike shall include but shall not be limited to consideration of the following factors. The existence of a single factor may not be conclusive proof that the criteria are met. A man may take the children on outings, provide gifts or even discipline them. This fact alone would not be proof of a spouselike relationship.

.421 Man has Assumed Financial Obligations

a. Man has paid family bills, opened charge accounts jointly or in his name for use of the family, or similarly obtained credit for the benefit of the family.

b. The man has paid medical or other bills incurred by the family.

c. Man has claimed mother and children as dependents in filing income tax.

.422 Man Represents Self as Spouselike

a. Representation to others, such as landlords, friends, community, as husband and wife.

b. Use of man's name by children for various purposes, including school records.

c. Man's attendance as parent at children's school function.

d. Man is attentive to children (other than casually) and provides recreation, gifts, etc., or admittedly disciplines children.

e. Children refer to man as father.

f. Substantial use of man's automobile by *AFDC* family or registration in man's and mother's names.

g. Use of *AFDC* family's address by man for mail, employment records, hospitalization, arrests, etc.

h. No demonstrable or confirmable alternative living arrangement other than with the *AFDC* family.

.43 *Substantiation of Relationship*

If the man has assumed financial obligations and/or represented himself as spouselike but there is no proof that he has been in a spouselike relationship, the presumption of a spouselike relationship does not exist and the county has the burden of proving that the man has assumed the role of spouse.

(Rev. 227-232, effective 3/1/69.)

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Calif. MPP § 42-519 Effect of Absent Parent Responsibility in Aid Payments [Still in effect].

AFDC .1 Aid shall be denied or discontinued for a child and for the child's parent (see Section 44-213.27) for so long as the parent who has custody and control of the child, or the parent

with whom the child resides knowingly refuses to cooperate with law enforcement officers as described in Section 42-513.2 (W&IC Section 11477).

.2 And shall not be denied, withheld or discontinued:

.21 Pending determination of the absent parent's ability to contribute;

.22 Pending receipt of the absent parent's contribution;

.23 Because the guardian or person other than the remaining parent refuses to cooperate in the enforcement of child support against the absent parent(s); or

.24 Because Child Support Services are refused, except as described in Section 42-519.1 above.

.3 Only the contributions actually made by the absent parent on behalf of the children shall be considered in determining eligibility or the amount of aid.

(Rev. 235, effective 3/1/69.)

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Calif. MPP § 44-113.23 Deductions from Earnings [Still in effect].

AFDC .23 *Expenses of Earnings—AFDC*

In order that the use of family income for necessary expenses to retain employment will not reduce the money available to meet basic and special needs, such expenses shall be deducted from gross earnings as follows: (See Section 44-111.23 for exemption to be applied against earned income.)

.231 Involuntary deductions made by the employer over which the employee has no control.

.232 Expenses for additional food, clothing and personal incidentals, allowed as a standard allowance according to the number of working days employed during the month, as follows:

1 through 5 days	$ 6.00
6 through 10 days	$12.00
11 through 15 days	$18.00
Over 15 days	$25.00

AFDC .233 The actual cost of other expenses which are mandatory to retain employment. Examples are:

a. Transportation to and from the job and on the job if not reimbursed by the employer, subject to conditions and limitations in Section 44-114.

b. Tools and licenses.

c. Dues to unions or similar assessments which are a condition of employment.

d. Necessary job-related educational or training expenses.

e. Child care, when the caretaker is employed.

f. Special safety devices not furnished by the employer.

g. Telephone service required in connection with employment.

.234 Expenses of earnings do not include items often deducted at the request of the employee but not mandatory to retain employment. Examples are:

a. Credit union shares, savings bonds, voluntary retirement, or elective profit sharing programs.

b. Elective health insurance.

c. Charitable contributions.

d. Dues to organizations where membership is not a prerequisite to employment.

e. Deductions for payments on consumer and other loans (see Section 44-113.2 regarding garnishments, etc.).

(Rev. 408 and 409, effective 7/1/69.)

APPENDIX G

California Welfare and Institutions Code, Section 11351.5, and Proposed Implementing Regulations

Calif. W. & I. C. § 11351.5 (Filed Sept. 3, 1969, c. 1417, Stat. 1969, S. B. No. 857):

Whenever an unrelated adult male resides with a family applying for or receiving aid under this chapter, he shall be required to make a financial contribution to the family which shall not be less than it would cost him to provide himself with an independent living arrangement.

The minimum financial contribution to the family shall be determined in accordance with standards established by the department which takes into account such adult male person's income and expenses. The regulations formulated by the department shall require the mother of the children and the unrelated male to present all of the facts in connection with the sharing of expenses which comprise the agreement whereby said adult male resides with the family. The conditions of the agreement and the facts related to the sharing of the family expenses shall be signed under penalty of perjury by both the mother of the child and the unrelated male. In the event that either the mother or the adult male person willfully and knowingly fails to cooperate during the period such joint sharing of expenses arrangement exists in setting forth all of the facts in accordance with provisions of this section, aid to the family may be discontinued.

The provisions of this section do not apply to a bona fide paying lodger, roomer, or boarder living in the home of a family applying for or receiving aid under this chapter.

Proposed Regulations to Implement
W. & I.C. § 11351.5

42-513.3 *Cooperation Requirement—Mother and Man Assuming the Role of Spouse* [new section to imple-

ment the cooperation requirement aspect of § 11351.5]

.31 The mother of a child for whom she is applying for or receiving AFDC and the man assuming the role of spouse shall present a written agreement to the county welfare department setting forth the facts which comprise the arrangement whereby the man shares the living expenses of the family. (W&IC 11351.5).

.32 The written agreement shall state the total estimated monthly average of the actual amount contributed to the family, and shall include a breakdown of the total to show the amount contributed:

a. To meet the board and room and other expenses of the man assuming the role of a spouse.

b. To meet or help meet the expenses of the family budget unit.

The agreement shall also state the gross amount of the monthly average amount of the man's earned income and separately, his income from all other sources.

.33 The agreement shall be signed by both the mother and the man assuming the role of a spouse under penalty of perjury. For this purpose, the agreement shall include the following statement:

"I certify through my signature that each of the statements given is true and correct to the best of my knowledge and belief. I make this statement under the penalty of perjury and

understand that any willful concealment or misstatement of material fact in this statement subjects me to the penalties prescribed for perjury in the Penal Code by the State of California. I agree to tell the county welfare department at once when there are any changes in the facts presented in this statement."

.34 Failure to cooperate by willfully and knowingly refusing to submit a written agreement to the county welfare department shall not be the basis for denying an application for aid or for discontinuing aid, except as provided in subsection 42-513.343.

.341 In situations involving failure to cooperate the county welfare department shall take immediate action to refer the cases to the district attorney for investigation and possible legal action in accordance with the requirements of Chapter 20-100, "Misuse of Funds". Concurrently, the Income Maintenance System shall refer the case to the Services System for assessment of the possible need for child protective or other services.

.342 During the investigative period, if the family is otherwise eligible, aid shall be paid and the amount of the contribution to the family (See Section 44-133.6) shall be estimated by the county welfare department taking into consideration the man's probable gross income, his expenses and the earned income exemption, and the community rate for board and room. The basis for the estimate shall be shown in the case record.

.343 If it is determined that there is no misuse of AFDC funds, but there is a continuing refusal to submit the agreement required by W&IC 11351.5 aid shall be discontinued if the probable gross income of the family budget unit and the man assuming the role of spouse is in excess of the maximum participation base for an AFDC-U family of the same size. Otherwise, aid shall continue to be paid as provided in 42-513.342 above.

• • •

42-513.8 *Man Assuming the Role of Spouse (MARS)* [supercedes former § 42-513.7]

A man assuming the role of spouse with respect to a family applying for or receiving AFDC:

.81 Is responsible for the support of his children; and

.82 Is required to make a financial contribution to the family which shall be not less than it would cost him to provide himself with an independent living arrangement. (W&IC 11351.5) (See Sections 42-515.5 and 44-133.6.)

• • •

42-515.42 *Substantiation of Relationship* [amends former § 42-515.43]

If the man has assumed financial obligations and/or represented himself as spouselike but there is no proof that he has been in a spouselike relationship, the presumption of a spouselike relationship does not exist and the county has the burden of proving that the man has assumed the role of spouse. Until the spouselike relationship is proven, the unrelated adult male living

with the AFDC family shall be considered a bona fide lodger, roomer or boarder and income to the family shall be determined in accordance with applicable provisions of Chapter 44-100.

• • •

44-115.7 *Item of Need Contributed* [amends former § 44-115.7]

.71 When an entire item of need in the Schedules of Minimum and Special Need Allowances (Sections 44-212 and 44-265) is received free as a contribution and not as a result of service performed, the monetary value of the item as shown in the Schedules is net income. Partially free or shared living costs do not represent income, except as provided with respect to the man assuming the role of spouse (See Section 44-133.6).

.72 When a child lives with a nonneedy relative, the amount by which the relative is able and willing to meet the child's total need is net income.

• • •

44-133.5 *Income of Unmarried Father* [amends former § 44-133.5]

.51 The amount the unmarried father is able to contribute to the AFDC family is net income to the FBU.

.52 In situations in which the children of the unmarried father and mother are eligible for AFDC on the basis of unemployment or incapacity of the unmarried father, all the children of either parent in the home may be eligible for AFDC. In such cases the unmarried father and the mother and all children are included in the FBU and all income of these persons is income to the FBU.

.53 In all other situations, the ability of the unmarried father to contribute to the FBU is determined as follows:

Step 1. Determine total need in accordance with the AFDC assistance standard for the family consisting of the members of the FBU, the unmarried father and his children living in the home.

Step 2. Determine total need of the FBU.

Step 3. Compute the difference between the two budgets to determine the amount that represents the need of the unmarried father for purposes of establishing his responsibility to meet his own needs and the extent of his responsibility to contribute to the FBU.

Step 4. From the needs determined in *Step 3*, deduct his net income computed in accordance with Section 44-113 to establish his ability to contribute to the FBU.

a. If his income exceeds the need, the excess is income to the FBU.

b. If his income does not exceed the need, there is no income to the FBU. His children are needy and may qualify for AFDC as a separate case if his income is less than the need.

.6 *Income of the Man Assuming the Role of a Spouse* [implements method for treating MARS income]

.61 The amount which the man assuming the role of a spouse contributes to the family budget

unit shall be not less than $65 monthly, the minimum amount of the OAS allowance for a recipient living in a board and room arrangement. (See Section 44-208.1)

.62 Net income to the family from the contribution made by the man assuming the role of spouse shall be the sum of the following:

.621 Ten percent (10%) of the estimated monthly average of the actual amount contributed for the cost of board and room, as shown on the signed agreement presented to the county welfare department in accordance with Section 42-513.3, and

.622 The amount of additional contributions to the family, determined in accordance with the other provisions of Chapter 44-100.

.63 A determination shall be made relative to possible misuse of AFDC funds as provided in Section 20-101 (W&IC 11480) at time of application, re-investigation or any other time when there is a change in the amount of the man's income, the family's need, or conditions of the agreement between the mother and the man.

Possible misuse shall be considered to exist if the man's income, after deduction of expenses of employment and the earned income exemption in accordance with Sections 44-113 and 44-111 respectively, is less than $129.

APPENDIX H

Significance of the New MARS Statute, Calif. W. & I.C. § 11351.5

1. *The New MARS Rules.* In September, 1969, the California legislature passed Chapter 1417, Statutes 1969 (S.B. No. 857), which eliminated from W. & I.C. § 11351 all references to "an adult male person assuming the role of spouse" (MARS) and enacted a new provision, W. & I.C. § 11351.5, to deal with the MARS situation. (The text of § 11351 prior to the 1969 revision appears as Appendix D, *supra.* The text of § 11351.5 is set forth in Appendix G, *supra,* along with the text of the proposed regulations to implement the new statute.) The new statute provides in part that "[when] an unrelated adult male resides with a family applying for or receiving aid [for families with dependent children] . . . , he shall be required to make a financial contribution to the family . . . ." Further, "[t]he minimum financial contribution to the family shall be determined in accordance with standards established by the department which takes [sic] into account such adult male person's income and expenses." The unrelated man and the mother of the children must submit an agreement under penalty of perjury regarding their living arrangements and expenses. *See also* Calif. *MPP* §42-513.33. The statute provides that failure by the mother *or* the MARS to cooperate with the Welfare Department may result in a discontinuance of aid to the family. *See* Calif. *MPP* §42-513.34.

   If the mother and MARS "willfully and knowingly" refuse to submit a written agreement as to their living arrangements and expenses, the County Welfare Department shall refer the case to the District Attorney for investigation and possible prosecution under Calif. W. & I.C. §11480, for misuse of AFDC funds. Calif.

MPP §42-513.341. During the investigation into whether there has been misuse of funds, the Department shall determine the amount of grant to be paid the family, taking into consideration the man's probable gross income, his expenses and the earned income exemption, and the community rate for room and board. Calif. *MPP* §42-513.342. If there continues to be no written agreement, but there has been no misuse of funds, "aid shall be discontinued if the probable gross income of the family budget unit and the man assuming the role of spouse is in excess of the maximum participation base [state-imposed grant ceiling] for an AFDC-U family of the same size." Calif. *MPP* §42-513.343.

2. *Operative Effect.* Under the statute, the minimum level of contribution for the MARS "shall not be less than it would cost him to provide himself with an independent living arrangement." §11351.5. The proposed regulations set the level according to the OAS (Old Age Security) allowance for a recipient living in a board and room arrangement. Calif. *MPP* §44-133.61. That amount is $65 per month. Thus, although the man is assumed to live at an AFDC standard of living, he must contribute to the family at the higher OAS level. More importantly, there is no mechanism provided to prevent grant reductions, terminations, or denials, because of the operation of a conclusive presumption that the amount determined available from the MARS is received by the needy children, regardless of the actual facts.

The needy children have no greater degree of meaningful economic security than under former § 11351. For example, if a MARS submits an agreement calling for more money than he actually contributes, the needy children will continue under the new statutes to have less income than they are otherwise entitled to receive. Their decreased grant results from the conclusive presumption that the MARS is contributing at the agreed

upon level. The welfare department will continue to furnish needy children with a presumption that they receive money in lieu of welfare assistance. The children will remain with a "legal right" that is of dubious value. The language of the new statute suggests that the support duty owed by the MARS under former § 11351 is, if anything, diluted. The threat of prosecution under § 11480 is of little help in those cases when the man does not have the use of and is not using welfare money, but is refusing to give his income to the children to be used in place of the assistance which would otherwise be granted by the welfare department. And, even if the threat of such prosecution were real, the children would not necessarily realize any financial benefits from putting the MARS in jail.

The prospective operation of § 11351.5 in cases when no agreement exists is similarly adverse to the interest of the needy children. Indeed, the absence of an agreement denies the needy children any opportunity to prove what their needs are and what income is *in fact* available to them. Guess-work as to how much income the MARS may have available for the needy children after his probable gross income, expenses and room and board needs are estimated will do little to insure that the family will have the amount of money determined by the welfare department to be necessary for basic subsistence. A dollar less may mean no milk or school transportation money for a child; irrebuttable presumptions will continue to be administrative conveniences but not legal tender for needy families.

Thus, the new laws appear to violate the Social Security Act and HEW regulations, and due process and equal protection guarantees in essentially the same fashion as §11351 did, and continues to do, in stepfather cases. Moreover, a host of additional infirmities afflict §11351.5 and the proposed implementing regulations. The erection of a new condition of eligibility—the mother's cooperation in submitting a written agreement—which is

not provided for in the Social Security Act appears illegal. *Doe* v. *Shapiro,* 302 F.Supp. 761 (D.Conn., 1969), *appeal filed,* 38 U.S.L. Wk. 3175 (No. 805, Nov. 11, 1969). Certainly the prospect of punishing needy children by terminating AFDC benefits because of the noncooperation of a nonrecipient MARS, whose actions are obviously not within the children's control or even that of their mother, violates the principles of *King* v. *Smith,* 392 U.S. 309, 325 (1968). A written agreement extracted from the mother and MARS under threat of removal of the children from the home (Calif. *MPP* §42-513.341), or aid reductions and terminations (Calif. *MPP* §42-513.343), is hardly a voluntary one. Because such a statement might be inculpatory (for example, as to the crime of adultery, Calif. Pen. C. §269(a)), the requirement for its submission violates Fifth Amendment guarantees. The new laws clearly reveal that the crucial point in defining a MARS relationship is the time when a *sexual* relationship exists between the mother and the MARS. Until the time the unrelated male is proved to be maintaining an intimate relationship with the mother (Calif. *MPP* §42-515.411), he is presumed to be merely a lodger. Calif. *MPP* §42-515.43. Thus the statute appears to be a morality enforcement device, focusing on sexuality, rather than a *necessary* aspect of administering a financial assistance program for needy children; it therefore violates *King* v. *Smith,* 392 U.S. 309 (1968). Furthermore, the county's interest in proving that a spouse-like relationship exists raises the specter of extended inquiry into personal matters protected by the Fourth and Fourteenth Amendments. *See Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Parrish* v. *Civil Service Comm'n,* 66 Cal.2d 260, 425 P.2d 223 (1967).

3. *Impact on this Appeal.* Even if §11351.5 moots all MARS issues, the new statute leaves absolutely unaltered the rules regarding stepfathers in AFDC households. The named appellants and those members

of the class who present stepfather issues (the Bell and Jacobs children [A. 23; P.R. 56, 71]) continue to be denied their rights by reason of the §11351 man-in-the-house rules. The families who suffered grant reductions, terminations and denials because of MARS circumstances continue to present valid claims for back benefits wrongfully denied them under former § 11351. *See Powell* v. *McCormack*, 395 U.S. 486, 495-500 (1969). Finally, the effective date of the new statute was November 10, 1969. However, the state and local welfare departments continue to enforce the former MARS rules. Although hearings were held on November 13, 1969, regarding the proposed regulations to implement § 11351.5, there is no final interpretation of the statute available. The prospects for continued denial of the rights of needy children by reason of California's man-in-the-house rules are not significantly lessened by the promulgation of the new law.

Appellants submit that the issues raised in this appeal are not mooted by §11351.5. The primary issues underlying the original actions remain to be resolved. While appellants concede that this Court should remand the determination of whether §11351.5, as finally implemented by the state welfare department, is valid, they assert that the questions concerning California's stepfather rules are unchanged by the new statute. Their appeal is, therefore, properly before this Court.